

SEW-EURODRIVE (Pty) Ltd**TERMS AND CONDITIONS OF SALE****1. INTERPRETATION**

In these terms and conditions:

- 1.1 unless the context clearly indicates otherwise, words importing natural persons shall include a reference to juristic personae and vice versa; a reference to one gender includes a reference to the other gender; a reference to the singular includes a reference to the plural and vice versa;
- 1.2 schedules and attachments to these terms and conditions shall be deemed to have been incorporated herein and shall form an integral part hereof and expressions defined in these terms and conditions shall bear the same meanings in such schedules or attachments;
- 1.3 a reference to a party in a document includes that party's successors-in-title and permitted assigns;
- 1.4 any reference to an enactment, statute or regulation is to that enactment, statute or regulation as at the signature date or as amended, re-enacted or substituted from time to time;
- 1.5 where the day on or by which anything is to be done is not a Business Day, it shall be done on or by the first Business Day thereafter;
- 1.6 when any number of days is prescribed in these terms and conditions, same shall be reckoned exclusively of the first and inclusively of the last day, unless the last day falls on a day which is not a Business Day, in which case, the last day shall be the next Business Day;
- 1.7 the headings appearing in these terms and conditions are for reference purposes only and shall not affect the interpretation hereof;
- 1.8 the rule of construction that, in the event of ambiguity, the agreement shall be interpreted against the party responsible for the drafting thereof, shall not apply;
- 1.9 if any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, notwithstanding that it is only in the definitions clause, effect shall be given to it as if it were a substantive provision in the body of these terms and conditions;
- 1.10 the use of the word "including" followed by a specific example/s shall not be construed as limiting the meaning of the general wording preceding it and the eiusdem generis rule shall not be applied in the interpretation of such general wording or such specific example/s;
- 1.11 where figures are referred to in numerals and words, if there is any conflict between the two, the words shall prevail;
- 1.12 the expiration or termination of these terms and conditions shall not affect such of the provisions of these terms and conditions which expressly provide that they will operate after any such expiration or termination, or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this;
- 1.13 if any provision requires the consent, approval or agreement of any party, that party may not act unreasonably in withholding or delaying any such consent, approval or agreement;

1.14 the following words and expressions shall have the following meanings assigned to them

“Business Day”	any day other than a Saturday, Sunday or official public holiday in the Republic of South Africa
“Company”	SEW-EURODRIVE (Pty) Ltd , a private company duly incorporated in accordance with the laws of the Republic of South Africa
“CPA”	the Consumer Protection Act, 68 of 2008, as amended from time to time
“Customer”	any party who purchases the Products from the Company
“Personal Information”	has the meaning ascribed thereto in Section 1 of POPIA
“POPIA”	the Protection of Personal Information Act 4 of 2013, as amended from time to time
“Products”	any Products purchased by the Customer from the Company pursuant to these terms and conditions

2. CONSUMER PROTECTION ACT

- 2.1 These terms and conditions are not intended to override the provisions of the CPA, which shall at all times continue to govern the terms and conditions of any supply of Products between the Company and an individual consumer or a Customer that is a juristic person with an asset value or annual turnover less than the threshold published from time to time by the Minister of Trade and Industry under section 6 of the CPA (“EXEMPT TRANSACTION”).
- 2.2 To the extent that there is any conflict between these terms and conditions and the provisions of the CPA in relation to an Exempt Transaction, the applicable provisions of the CPA will prevail.
- 2.3 All the provisions of these terms and conditions will be deemed to be qualified to the extent required in order to ensure compliance with the applicable provisions of the CPA in relation to an Exempt Transaction and these terms and conditions must be interpreted and applied accordingly.

3. ORDERS AND QUOTATIONS

- 3.1 The Customer shall place orders on the Company as and when it requires Products. The Company shall issue a quotation to the Customer which, unless otherwise stated, will be capable of acceptance by the Company within a period of 30 (THIRTY) days from the date of the relevant quotation, whereafter it will be subject to withdrawal and/or alteration by the Company.
- 3.2 Notwithstanding clause 3.1, quoted prices in respect of Products (“PURCHASE PRICE”) may be increased by the Company at any time, prior to delivery thereof, in the event of:
- 3.2.1 a change in the Customer's order, in respect of either the quantity of the Products or their designs; and/ or
- 3.2.2 an escalation in any importation costs, including without limitation, the foreign exchange rate, costs of raw materials and costs of carriage where the Products are imported and/or manufactured from imported material.
- 3.3 An increase in the Purchase Price shall be communicated to the Customer within a reasonable period of time from the time that the Company becomes aware of the increase.

- 3.4 Acceptance of the order by the Company will only be deemed to occur when the Company invoices the Customer for same. Each order submitted by the Customer shall be a separate and divisible transaction.

4. STATEMENTS, PURCHASE PRICE AND PAYMENT

- 4.1 The Company shall issue the Customer with a statement of account (“**STATEMENT**”), at the end of each month, detailing all amounts owing to the company as at the end of the month. The Customer shall have 2 (**TWO**) Business Days to dispute the Statement, failing which, the Statement shall be deemed to be accepted by the Customer.
- 4.2 The undisputed amounts reflected in each Statement shall be paid by the Customer to the Company:
- 4.2.1 in South African Rand;
- 4.2.2 in full, free of exchange and without set-off or deduction; and
- 4.2.3 within 30 (**THIRTY**) days of the date of the Statement relating thereto, unless otherwise agreed by the Company in writing.
- 4.3 Any amount not paid by the Customer on due date shall bear interest at the maximum permissible rate of interest applicable in law, from the due date thereof until date of payment, both days included.
- 4.4 A certificate issued by any director of the Company (WHOSE AUTHORITY AND APPOINTMENT IT SHALL NOT BE NECESSARY TO PROVE) stating the amount owing to the Company by the Customer, the fact that it is due and payable, the rate of interest payable thereon, or the date from which such interest is calculated, shall be prima facie proof of any of the foregoing for all purposes, including, all legal proceedings.

5. CREDIT LIMIT AND CREDIT CONSENT

- 5.1 The Customer warrants that the information given by it is accurate and complete and further agrees to update the information supplied as and when necessary in order to ensure the accuracy of the information, failing which the Company will not be liable for any inaccuracies.
- 5.2 The Company may grant a credit limit to the Customer within its sole discretion. This limit may be reduced or withdrawn by the Company at any time, without notice to the Customer.
- 5.3 Should the Company elect to withdraw the credit limit, the full outstanding amount due to the Company by the Customer on all accounts which the Customer has with the Company, will immediately become due and payable on the date of withdrawal of the credit limit.
- 5.4 The Customer consents to the Company, or its nominated representatives, making enquiries about the Customer’s credit record with any credit bureau, reference agency or other credit provider when assessing the Customer’s credit application. The Customer further consents to the Company, or its nominated representative, providing the credit information of the Customer to any credit bureau, reference agency or other credit provider.

6. DELIVERY

- 6.1 Delivery of the Products shall:
- 6.1.1 occur on the date specified in the invoice, or such other date as indicated by the Company (“**COLLECTION DATE**”); and
- 6.1.2 be Ex Works.

6.2 The Company shall use reasonable endeavours to deliver the Products on the Collection Date but shall not accept nor be liable for any penalties, nor be bound or held liable in any way for any failure to deliver the Products by such time. As such, time is not of the essence.

7. RISK AND OWNERSHIP

7.1 Ownership in and to the Products shall vest in the Company until such time as the Customer has paid the Purchase Price relating to the Products, including any interest thereon, in full.

7.2 Notwithstanding the above and subject to clause 7.3, risk and in and to the Products shall pass to the Customer as soon as the Products:

7.2.1 are, on the Collection Date, made available by the Company to be loaded by the Customer's nominated carrier, where the Products are being collected from the Company's premises; or

7.2.2 leave the Company's premises in the Company's nominated carrier where the Products are being delivered by the Company to the Customer's nominated address.

7.3 In instances the Customer fails to accept delivery of the Products when they are:

7.3.1 made available on the Collection Date pursuant to clause 7.2.1; or

7.3.2 delivered to the Customer's nominated address pursuant to clause 7.2.2, the Customer shall assume all risk in and to the Products and be liable for all costs associated with storing and packing the Products notwithstanding the fact that the Products may have not left the Company's premises.

8. WARRANTIES AND REPRESENTATION

8.1 The Customer hereby warrants to and in favour of the Company that it:

8.1.1 has the requisite authority and capacity to enter into these terms and conditions; and

8.1.2 shall at all times comply with all applicable laws, regulations and sanctions of any competent Governmental or regulatory body.

8.2 The Company hereby warrants to and in favour of the Customer that the Products shall be free of defects in respect of parts and/ or workmanship existing in the Products at the delivery date set out in the order and, for a period of 1 (ONE) year thereafter ("**Warranty Period**"), the Company shall, in its sole discretion, either:

8.2.1 remedy such defect by adjusting, repairing or replacing the defective Products, or part thereof; or

8.2.2 provide the Customer with a pro-rata refund of the Purchase Price in respect of such defective Products, and same shall be the Customer's sole and exclusive remedy against the Company.

8.3 The Company shall only be obliged to comply with the provisions of clause 8.2 if:

8.3.1 the Customer notifies the Company in writing of such defect as soon as it becomes aware of such defect within the Warranty Period;

8.3.2 the Company is entitled to inspect the defective Products; and

- 8.3.3 the Customer, at its own expense, returns the defective Products to the Company's premises if the Company so requires.
- 8.4 No other warranties or guarantees are made or given by the Company, whether express, implied in law or residual, including, without limitation, the warranties of merchantability and fitness for a particular purpose of the service.

9. BREACH

9.1 Should the Customer:

- 9.1.1 breach any of the provisions of these terms and conditions;
- 9.1.2 being an individual, dies, is provisionally sequestered or declared insolvent;
- 9.1.3 being a company, be dissolved or is liquidated;
- 9.1.4 has a judgement taken against it and fails to take steps to satisfy or rescind such judgement within 30 **(THIRTY)** days after the granting of such judgement; and/or
- 9.1.5 makes any general arrangement or composition with its creditors or any class of creditors,

the Company shall be entitled, without prejudice to its other rights at law including the right to claim damages **(INCLUDING ALL LEGAL COSTS ON AN ATTORNEY AND OWN CLIENT BASIS AND ANY VALUE ADDED TAXES)**, to:

- 9.1.6 immediately cancel these terms and conditions with the Customer;
- 9.1.7 suspend delivery of any Products ordered by the Customer; and/or
- 9.1.8 claim immediate payment by the Customer of its payment obligations then due.

10 RIGHTS ON TERMINATION

- 10.1 Notwithstanding anything to the contrary contained herein, on termination or cancellation of these terms and conditions for any reason whatsoever (the "**Termination Date**"), any amounts due by the Customer to the Company shall immediately become due and payable to the Company and the Customer shall make payment of same to the Company within 7 (seven) days of the Termination Date.

11 EXCLUSION OF LIABILITY AND INDEMNITY

- 11.1 The Company shall not be liable to the Customer in any circumstances whatsoever for any indirect, contingent or consequential loss **(INCLUDING BUT NOT LIMITED TO LOSS OF REVENUE, LOSS OF BUSINESS, LOSS OF PROFIT AND/OR LOSS OF DATA)** sustained or incurred by the Customer howsoever arising. These limitations of liability shall apply regardless of the form of action, whether in contract, delict or otherwise and regardless of whether the Customer has been advised as to the possibility of such damages and/or losses occurring.
- 11.2 Notwithstanding anything to the contrary contained in these terms and conditions, the Company's maximum aggregate liability for any loss, liability, damage or expense of whatsoever nature that may arise in respect of the Products shall in no event exceed the total Purchase Price of the Products to which the claim**(S)** relates.

11.3 The Company shall not be liable to the Customer in any circumstances whatsoever for loss or damage sustained or incurred by the Customer arising out from or in connection with any injury to persons or damage to property as a result of use of the Products by the Customer and/or any third party.

11.4 The Customer hereby irrevocably and unconditionally indemnifies the Company, its directors, employees, agents and subcontractors (“**INDEMNITEES**”) and holds them harmless against any and all losses, liabilities, damages, claims, demands, judgments, fines, penalties, costs and expenses of any nature whatsoever (**INCLUDING BUT NOT LIMITED LEGAL TO COSTS ON THE SCALE BETWEEN ATTORNEY AND OWN CLIENT**) which the Indemnitees may suffer or incur in connection with or arising out of:

11.4.1 a breach by the Customer of any of the warranties or the provisions of this Agreement; and/ or

11.4.2 the use of the Products by the Customer and/or any third party.

12 FORCE MAJEURE

12.1 No failure by the Company to perform in accordance with any provision of these terms and conditions shall constitute a breach if such failure arose as a result of force majeure, including acts of God, war, strike, fire, civil disorder, export control, international restrictions, pandemics, epidemics, sanctions or changes in laws, regulations, ordinances or the like made by any competent authority or other circumstances outside the control of the Company.

12.2 Should an event of force majeure continue for a period of more than 60 (sixty) days, the Company shall be entitled, but not obliged, to terminate these terms and conditions by giving the Customer written notice to that effect.

13 DATA PROTECTION

13.1 The Customer hereby acknowledges that whilst these terms and conditions are in force, the Company may require the Customer to supply the Company with certain Personal Information (including business contact names, telephone numbers and email addresses). The Customer consents, in accordance with the provisions of POPIA, that the Company may enter, process, store and/or transfer such Personal Information provided by the Customer to the Company, from time to time, for the purposes of, *inter alia*, performing under these terms and conditions, and evaluating compliance with these terms and conditions.

13.2 The Customer consents to the retention of the Personal Information for a period to be reasonably determined by the Company in compliance with the provisions of POPIA.

13.3 The Customer undertakes ensure that all appropriate consents required for the use and transfer of Personal Information has been obtained prior to supplying the Company with such Personal Information.

13.4 For any questions regarding the use of Personal Information the Customer is required to contact Nici Smith at nsmith@sew.co.za.

14 SANCTIONS AND EXPORT CONTROL

14.1 For the purposes of this clause 14, the following words and expressions shall bear the meanings assigned to them hereunder and cognate words and expressions shall bear corresponding meanings:

14.2.1 “Export Control” means trade controls, licensing or permit requirements, customs and other restrictions on the export or transit of goods, economic resources, technology, know-how and services;

- 14.1.2 "Sanctioned Entity" means a person, country or territory which is (i) listed on a Sanctions List (ii) is subject to Sanctions, or (iii) is owned or controlled by any person, country or territory which is listed on a Sanctions List;
- 14.1.3 "Sanctioned Transaction" means transacting or doing business, directly or indirectly, with a Sanctioned Entity;
- 14.1.4 "Sanctions" means trade, economic or financial restrictions or sanctions, laws, regulations, embargoes or restrictive measures imposed, administered or enforced from time to time by any Sanctions Authority;
- 14.1.5 "Sanctions Authority" means any of:
- 14.1.5.1 the United Nations;
 - 14.1.5.2 the European Union or any present or future member state thereof;
 - 14.1.5.3 the Council of Europe;
 - 14.1.5.4 the government of the United States of America;
 - 14.1.5.5 the government of the United Kingdom;
 - 14.1.5.6 Switzerland;
 - 14.1.5.7 any other sanctioning authority recognised by the Company from time to time; or
 - 14.1.5.8 the respective governmental authorities or agencies of any of the foregoing, including without limitation, Office of Foreign Asset Control of the US Department of the Treasury ("OFAC") and the US Department of State;
- 14.1.6 "Sanctions List" means any of the lists of specifically designated nationals or designated persons or entities (or equivalent, including but without limitation, the "*Specially Designated Nationals and Blocked Persons*" list and the "*Sectorial Sanctions Identifications and Foreign Sanctions Evaders*" list maintained by the OFAC) held by any Sanctions Authority (each as amended, supplemented or substituted from time to time in relation to Sanctions) or any similar list maintained by any Sanctions Authority.
- 14.2 The Customer acknowledges and warrants that:
- 14.2.1 neither it, nor any of its directors or officers, nor to its knowledge any of its employees, is a Sanctioned Entity;
 - 14.2.2 it will not use or otherwise make the Products available for the purposes of benefitting, directly or indirectly, the activities of any person or entity which is a Sanctioned Entity.
- 14.3 The Customer hereby indemnifies the Company from and against all losses, liability, damages and costs suffered or incurred by the Company arising out of or in connection with a breach by the Customer of any of the warranties given in terms of clause 14.2.
- 14.4 The Customer acknowledges that the Products may be subject to Export Control and Sanctions. The Parties shall comply with all applicable law relating to Export Control and Sanctions, administered, enacted or enforced by all Sanctions Authorities or any country relevant to the dealings of the Parties.
- 14.5 The Parties have taken all reasonable steps to ensure that appropriate controls and safeguards are in place to prevent the Parties from entering into a Sanctioned Transaction.
- 14.6 The Parties agree and undertake to not knowingly do anything which may cause either Party to breach any applicable law relating to Export Control or any Sanctions.

- 14.7 The Parties acknowledge that the supply of the Products may be subject to Export Control and/or authorization from a Sanctions Authority. In the event that any Export Control prevent a Party (the “**Affected Party**”) from fulfilling any of its obligations in terms of an order or these terms and conditions, then the Affected Party shall notify the other Party in writing as soon as it becomes aware of such prevention of performance and such notice shall include whether the prevention of performance is:
- 14.7.1 temporary, in which case the obligations of the Affected Party shall be suspended to the extent and for so long as the Affected Party is prevented from fulfilling them; or
 - 14.7.2 permanent, in which case the other Party shall be entitled to terminate the order (in whole or in part) by giving the Affected Party 5 (five) days’ written notice.
- 14.8 In the event that any Sanctions prevent the Company from fulfilling any of its obligations in terms of an order or these terms and conditions, the Company shall be entitled to immediately terminate the order (in whole or in part) by giving the Customer written notice thereof.
- 14.9 The Company will not be liable for any loss, damage, claims, costs or any other liability, which may arise as a result of:
- 14.9.1 the Company not detecting that any person is subject to Sanctions imposed by a Sanctions Authority;
 - 14.9.2 the Customer becoming subject to Sanctions imposed by any Sanctions Authority;
 - 14.9.3 the Customer using or attempting to use the Products for the purpose of benefitting, directly or indirectly, the activities of any person or entity which is a Sanctioned Entity; or
 - 14.9.4 the seizure, blocking, or withholding of the Products in relation to the Customer by any Sanctions Authority.
- 14.10 The Parties agree that any claims for compensation for damages arising out of or in connection with the prevention of performance due to Export Controls are specifically excluded, save for damages arising from the fraudulent or willful misconduct of a Party.
- 14.11 The Parties undertake to co-operate in any authorisation or licensing procedures required by Export Controls or Sanctions. Upon request, each Party shall immediately provide relevant information or documents that are required in order to comply with applicable laws relating to Export Controls and Sanctions.

15 DOMICILIUM AND NOTICES

- 15.1 Whenever, by the provisions of these terms and conditions, notice, demand or other communication shall or may be given to either party hereto, the same shall be in writing in English and shall be addressed to the other party at its address first set forth on the cover page of these terms and conditions, or to such other address or addresses as shall from time to time be designated by prior written notice by either party.
- 15.2 The provision of clause 15.1 shall not operate as to invalidate the giving or receipt of any written notice, demand or other communication which is actually received by the addressee other than by a method set out in clause 15.1.

16 DISPUTE RESOLUTION

- 16.1 The parties hereto agree that in the event any dispute is not resolved in the ordinary course of business, the parties shall in good faith attempt to resolve the dispute through negotiation by their representatives. All disputes which remain unresolved within 30 (**THIRTY**) days of the dispute arising shall be finally settled by arbitration in South Africa, in accordance with the laws of the Republic of South Africa and the Rules of the Arbitration Foundation of Southern Africa (“**AFSA**”) and the Arbitration Act, 1965 of the

Republic of South Africa and any statutory modification or re-enactment thereof. The award shall be final and binding upon both the parties. Nothing in this clause shall prevent either party from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other party to do any act.

17 SURETYSHIP

- 17.1 Only to the extent that a surety is required by the Company, the signatory to these terms and conditions hereby unconditionally and irrevocably binds himself to the Company as surety for and co-principal debtor of the Customer in respect of any and all of the Customer's duties and obligations under these terms and conditions, and renounces the benefit of the legal exceptions of excussion and division, non-indebtedness, error in calculation and revision of accounts, the force and effect of which he acknowledges himself to be fully acquainted with.
- 17.2 For clarification purposes, if the Company does not require the signatory hereto to bind himself as surety and co-principal debtor of the Customer, this clause shall be deemed to be pro non scripto, but without affecting, impairing or invalidation any of the remaining provisions of these terms and conditions which shall continue to be of full force and effect.

18 GENERAL

- 18.1 These terms and conditions supersedes all agreements between the Customer and the Company, and constitutes the entire agreement between the Customer and the Company, with respect to the subject matter dealt with herein and no representation not contained herein shall be of any force between the Customer and the Company.
- 18.2 No addition to, variation, modification or consensual cancellation of these terms and conditions, including this clause 18.2, shall be of any force or effect unless in writing and signed by or on behalf of the Company.
- 18.3 The Customer shall not be entitled to cede, assign or transfer all or any of its rights and/or obligations in terms of this Agreement, without the prior written consent of the Company.
- 18.4 If any provision hereof is held to be illegal, invalid or unenforceable for any reason, such provision shall be deemed to be pro non scripto, but without affecting, impairing or invalidation any of the remaining provisions of these terms and conditions which shall continue to be of full force and effect.
- 18.5 These terms and conditions will be governed by the laws of the Republic of South Africa and all disputes, actions and other matters relating thereto will be determined in accordance with such law.

19 SIGNATURE

- 19.1 By signing this Agreement the Parties acknowledge that they have read all the terms and conditions hereof and that they are fully acquainted with the nature and purpose of this Agreement.
- 19.2 The Customer's signatory hereto hereby warrants that he has due authority to sign these terms and conditions on behalf of the Customer.